

03/29/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 18
AFD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re IntraGroup, Inc.

Serial No. 75/477,608

Jill M. Pietrini of Manatt, Phelps & Phillips for
IntraGroup, Inc.

Glenn Mayerschoff, Trademark Examining Attorney, Law Office
107 (Thomas Lamone, Managing Attorney).

Before Simms, Hairston and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

IntraGroup, Inc. (applicant) filed an application to register the mark ITJOBS for services ultimately identified as "providing online via a global computer network resumes and job placement information in the information technology field" in International Class 35. The application (No. 75/477,608) was filed on May 1, 1998, and it claimed a date of first use and a date of first use in commerce of March 31, 1997.

The Examining Attorney initially refused registration on the ground that the mark "ITJOBS merely describes a central and significant aspect of the services, namely, that information technology job information is provided." Office Action dated December 23, 1998, p.1. Applicant disputed the merely descriptive refusal, and it argued that the ITJOBS could have many meanings including Italian jobs, international trade jobs or "[I]t could simply be the word 'it.'" Response dated April 2, 1999.

The Examining Attorney made the refusal to register on the ground of mere descriptiveness final and he relied on evidence that "IT" is a common abbreviation for "information technology" and NEXIS printouts that showed that the term "IT jobs" and "information technology jobs" were commonly used to refer to jobs in the field of information technology.

Applicant filed a notice of appeal and a request for reconsideration, both dated October 25, 1999, in response to the Examining Attorney's final refusal. Significantly, applicant amended its application to now seek registration on the Principal Register under Section 2(f) of the Trademark Act claiming that its mark had acquired secondary meaning. 15 U.S.C. § 1052(f). The evidence that applicant submitted included: (1) its website has had nearly 90,000

hits since January 1, 1999, (2) 1165 resumes are listed on the website, and (3) the website has been in use for almost three years.

The Examining Attorney was not persuaded by the evidence. He maintained the refusal that the mark was merely descriptive under Section 2(e)(1) of the Trademark Act and he rejected the claim of acquired distinctiveness. The evidence showed that the term "IT job" or "IT jobs" were used extensively, including references to other Internet job-posting sites. Finally, the Examining Attorney stated that "the proposed mark appears to be *generic* for a job field and, therefore, incapable of identifying the applicant's services in placing persons in those jobs and distinguishing them from those of others." Office Action dated November 26, 1999 (emphasis in original).

In its response dated May 25, 2000, applicant supplied more evidence to indicate that applicant has received more than 2.5 million hits and more than 150,000 visitors have spent more than 5 minutes at its site.

The Examining Attorney again found that applicant had not demonstrated that the term had acquired secondary meaning. He also submitted additional evidence that showed competitors used the term "IT Jobs" or its equivalent for a

job category. The Examining Attorney also noted that "[e]ven assuming the Board finds the term not to be generic, the evidence of secondary meaning falls far short of what would be required to claim distinctiveness of such a highly descriptive term." Office Action dated August 15, 2000, p.2.

Both applicant and the Examining Attorney filed briefs, but no oral argument was requested.

The Examining Attorney maintains that the mark ITJOBS is at the very least merely descriptive of applicant's services of "providing online via a global computer network resumes and job placement information in the information technology field." In addition, in response to applicant's claim of acquired distinctiveness, he notes that "it is generic in connection with such services." Brief, p.1. If it is not generic, "the evidence of acquired distinctiveness is insufficient for registration purposes." Id.

Applicant maintains that its term is suggestive because it has more than one meaning. If it is not suggestive, it is merely descriptive and applicant alleges that it has demonstrated that the term has acquired distinctiveness as shown by the amount of traffic and usage of its website.

GENERICNESS

The Court of Appeals for the Federal Circuit has held that: "The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question." H. Marvin Ginn Corp. v. Int'l Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). Ginn goes on to explain that:

Determining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?

Id.

Applicant's services are "providing online via a global computer network resumes and job placement information in the information technology field." More succinctly put, applicant services involve providing information technology job placement information on the Internet. First, the Examining Attorney has provided significant evidence of what the letters "IT" mean. The letters "IT" are a recognized computer science abbreviation of "information technology." Acronyms, Initialisms & Abbreviations Dictionary. The evidence also shows that the

term is used repeatedly with the term "jobs" to refer to jobs in the information technology industry. A sample of some of the Examining Attorney's evidence follows.

IT jobs are those in which individuals design, build and/or maintain an information technology infrastructure. Pittsburgh Post-Gazette, July 4, 2000 (p.A-19).

Matrix recently surveyed RTP employers and found a wide range of salaries for IT jobs, including a high of \$142,022 for an information system director. News and Observer (Raleigh, N.C.) April 27, 1999 (p. D1).

Nationally, it's a huge problem. There are 350,000 unfilled IT (information technology) jobs. Knoxville News-Sentinel, September 24, 1998 (p.C1).

What is the biggest obstacle you face in performing your IT (information technology) job? Chicago Sun-Times, November 28, 1999 (p.1).

According to a study by the Information Technology Association of America, more than 400,000-information technology (IT) jobs remain unfilled. Newsday, April 26, 1999 (p. Y9).

Microsoft Press general manager Jim Brown declared, "The IT skills gap threatens the world economy now. Today there are nearly 350,000 IT jobs open in the U.S. Publishers Weekly, April 26, 1999 (p.33).

[A]t least 10 percent of the 300,000 to 400,000 IT jobs go unfilled each year . . . The information technology field will account for 80 percent of new jobs. Chicago Sun-Times, April 22, 1999 (p.32).

Stock said tracking those IT jobs is difficult because many computer-tech jobs are hidden within manufacturing and other sectors. Dayton Daily News, April 18, 1999 (p. 1F).

[S]he said 47,000 of the 100,000 IT jobs available at any one time are displayed on JobWorld and its main competitors. Computing, May 6, 1999 (p.3).

Clearly, the Examining Attorney's evidence demonstrates that the term IT jobs is commonly used as a name of a particular type of job, i.e., a job in the information technology industry. The Examining Attorney also presented evidence that the term IT jobs was used by competitors and others to refer to the service of providing information about information technology jobs.

Positive Support Review is launching a Web-based IT job listing service. InformationWeek, November 3, 1997 (p.140).

[M]anaging director of the Boston office of Source Services Corp., a national IT job placement firm in Dallas. InformationWeek, January 27, 1997 (pp.80-84).

VP of the New England division of the Eliassen Group Inc., a national IT job-placement firm. InformationWeek, December 2, 1996 (p.36).

Atlanta IT Jobs: Atlanta IT jobs for the IT pro. www.alwaysomething.freesavers.com/home.htm.

Hot IS and IT Jobs In Minneapolis: Minneapolis has hot IT and IS direct placement and contract jobs. www.newtechcity.com.

To post resumes and access IT job listing. PC Week, March 4, 1996 (p.E4).

Other evidence demonstrates that the term "IT Jobs" is commonly used to describe the openings for IT jobs and the market for information technology professionals. Therefore, we conclude that the genus for applicant's

services would be information technology (or IT) job placement services.

The next Ginn question concerns whether the relevant public understand the term to refer primarily to the genus of the services. "[T]o refuse registration on the ground that an applicant seeks to register the generic name of the goods, the PTO must show that the word or expression inherently has such meaning in ordinary language, or that the public uses it to identify goods of other producers as well." In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987). Here, ordinary language usage of the term "IT jobs" shows that it is used to identify jobs in the information technology sector. The only question is whether the relevant public would refer to applicant's services as "IT jobs." Ginn, 228 USPQ at 530. The answer to the question is provided by the evidence that shows that the public refers to similar services as "IT job placement services." Firms that provide information about information technology jobs are referred to as "IT job placement firms." Their websites list their services as "IT Jobs" and a category of jobs these sites offer is identified as IT or information technology jobs. Therefore, the term ITJOBS would be the genus used by the public to refer to services of providing resume and job

placement information concerning the information technology field on the Internet. Also, the evidence shows use of the exact term IT Jobs so that even if the term is considered to be a phrase, the evidence supports the finding that it is the genus of applicant's services. In re American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999). Therefore, we agree with the Examining Attorney that the term ITJOBS is generic for providing online via a global computer network resumes and job placement information in the information technology field.

We disagree with applicant's statement that "the phrase IT JOBS may describe some type of employment, but does not show use of IT JOBS for employment placement services." Reply Brief at 3. The evidence clearly shows the term IT jobs is commonly used and understood by the public to refer to jobs in the information technology field. The evidence goes further and shows that it refers to those providing job placement services in the field of information technology. Firms providing job placement services in the information technology field are called "IT job placement firms" and Internet listings use the term "IT Jobs" to inform the potential job seekers or employers that they have information about information technology

jobs, often in a particular geographic area such as
"Atlanta IT JOBS."

Applicant argues that "ITJOBS is not a word in the English language. The mark ITJOBS, as a coined term, has multiple connotations." Brief at 7. The fact that applicant spells its mark without a space between the terms "IT" and "JOBS" is of no moment. Gould Paper (SCREENWIPE generic for a wipe for cleaning television and computer screens); In re Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978) (GASBADGE at least descriptive for gas monitoring badges; three judges concurred in finding that term was the name of the goods); Cummins Engine v. Continental Motors, 359 F.2d 892, 149 USPQ 559 (CCPA 1966) (TURBODIESEL generic for a type of engine). The multiple uses of the exact term "IT JOBS" demonstrate that there is nothing coined about the term.

While applicant maintains that there are numerous other meanings the abbreviation IT may have, this does not reduce its meaning when it is applied to services identified as "providing online via global computer networks resumes and job placement services in the information technology field." Genericness must be viewed in relationship to the goods or services for which registration is sought. The fact that IT can also stand

for international trade or Italian does not take away from the fact that when IT is associated with providing online via a global computer network resumes and job placement information in the field of information technology potential purchasers will understand the term as referring to "information technology."

DESCRIPTIVENESS

Although we have found the term ITJOBS to be generic, in the interest of completeness, we now analyze the mark to see if it is merely descriptive, and, if so, whether applicant submitted sufficient evidence of acquired distinctiveness. We start by noting that if the term ITJOBS is not generic, it is certainly highly descriptive. For a mark to be merely descriptive, it must immediately convey knowledge of the ingredients, qualities, or characteristics of the goods or services. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 525, 205 USPQ 505, 507 (CCPA 1980). To be "merely descriptive," a term need only describe a single quality or property of the goods. International Nickel Co., 262 F.2d 806, 807, 120 USPQ 293, 294 (CCPA 1959). While applicant argues that the "existence of several meanings of the term ITJOBS precludes a finding that a potential purchaser would immediately know

the characteristics or functions of Applicant's services" (Brief, p.8), descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. Abcor, 588 F.2d at 814, 200 USPQ at 218.

Here, the Examining Attorney, as discussed above, has submitted sufficient evidence of the common use of the term "IT JOBS" in the information technology field. The evidence shows that IT is a commonly used abbreviation for information technology. Applicant's services are in the information technology field. There can be no doubt that potential purchasers or users of job placement services in the information technology field, upon seeing the term ITJOBS in relation to that service, would immediately know a characteristic of the placement services, i.e., that the placement services are in the field of information technology.

ACQUIRED DISTINCTIVENESS

Applicant supports its Section 2(f) claim with evidence that shows that "from January to May of 2000, Applicant's website received approximately 2.5 million hits, including an average of 450,000 hits per month and an average of 150,000 clickthroughs/page per month." Brief, p.9. Also, there were 4,210 resumes posted on its website.

Applicant's two printouts, totaling 211 and 72 pages respectively, identify by name the individuals who posted resumes on its website. Other evidence includes the fact that over 50 employers have job openings posted on applicant's site and that applicant has been using its mark for three years.

Applicant has the burden of proving that its mark has acquired distinctiveness. In re Hollywood Brands, Inc., 214 F.2d 139, 102 USPQ294, 295 (CCPA 1954)("[T]here is no doubt that Congress intended that the burden of proof [under Section 2(f)] should rest upon the applicant"). "[L]ogically that standard becomes more difficult as the mark's descriptiveness increases." Yamaha Int'l Corp. v. Hoshino Gakki Co., 840 F.2d 1572, 6 USPQ2d 1001, 1008 (Fed. Cir. 1988).

Applicant's evidence consists primarily of the traffic and usage of its website. The Examining Attorney's printouts demonstrate that IT (information technology) jobs are an important part of the job market and that there is concern about filling these jobs. "The nation's need for IT workers is expected to double. In North Carolina, there are well over 175,000 IT jobs." The News and Observer (Raleigh, NC), April 27, 1999 (p. D1). "[M]ore than 400,000-information technology (IT) jobs remain unfilled

due to a lack of skilled workers." Newsday, April 26, 1999 (p.Y9). "Given the estimates of IT job openings, Joerres said: 'I find that very interesting because there are about 1.5 million resumes on the Internet with IT jobs.'" Milwaukee Journal Sentinel, October 25, 1999 (p. 1).

Information technology is a field where there are hundreds of thousands of unfilled job vacancies. At least one story indicates that there are over a million IT resumes posted on the Internet. Applicant's site has generated millions of hits and "as of the date of the submission of this evidence, there were 4,210 resumes posted." Brief, p.10. While applicant has been able to demonstrate some success of its website, this does not translate into a finding that the relevant public recognizes the term ITJOBS as a trademark. Applicant has only used its mark since March 31, 1997. We have no evidence of the type or amount of advertising or affidavits or other evidence that show recognition of the term as a trademark. Compare Hollywood Brands, supra. In addition, the term it seeks to register (ITJOBS) is commonly used in referring to "IT job listings," "IT job placement," "IT jobs market," and "IT job openings." A word this commonly used for services requires that an applicant seeking registration under Section 2(f) provide more information

than the number of website visitors and resumes and job postings.

In addition, as the evidence indicates, IT professionals are in great demand. The term "IT jobs" would be a common term job seekers and potential employers would use in attempting to fill vacancies and obtain jobs online. Inasmuch as ITJOBS tells web users the subject matter of applicant's website it is little wonder that applicant's site is popular. By itself, evidence of the popularity of applicant's website does not demonstrate that its term has acquired distinctiveness. The Examining Attorney has noted that "[p]ersons surfing the Internet looking for information about certain topics would be drawn to sites with descriptive and generic words that inform them of the content they are seeking." Brief, p.7. It is not surprising that a website called ITJOBS in a field where hundreds of thousands of jobs go unfilled has received many hits and has posted thousands of resumes. This evidence does not establish that the term ITJOBS for providing online via a global computer network resumes and job placement information in the field of information technology services has acquired distinctiveness.

In summary, after careful consideration of the relevant authorities and the evidence and arguments

Ser. No. 75/477,608

submitted by applicant, we find that the term applicant seeks to register (ITJOBS) is merely descriptive of, and generic for, the services recited in the application. Moreover, assuming that the matter is not generic, we find that applicant has failed to submit sufficient evidence of acquired distinctiveness to warrant registration under Section 2(f) of the Trademark Act.

Decision: The refusals to register are affirmed.